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NO. 85-1168

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CITY OF CLEVELAND, et al.,
Petitioners,
vs.
JANE HAWLEY, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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February, 1986

Questions Presented for Review

1. Did the Court of Appeals properly find that regular users of a municipal airport have standing to challenge a city's allocation of a portion of the airport for use as a sectarian chapel, in circumstances where it appears that the city sponsors the chapel and where the users will have to confront unwanted religious exercises in a public facility?

2. Did the Court of Appeals properly reverse and remand the case to the District Court for further proceedings on the issue of municipal taxpayer standing where it found that the record on summary judgment contained evidence that the airport chapel lease was a subsidy by the city to the diocese and would result in a loss of municipal revenues?

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Ordinance and Charter Provisions Involved

In addition to the provisions cited in the petition, this case involves City of Cleveland Ordinance No. 1607-83 and Cleveland City Charter §§87 and 90. The texts are set forth in the appendix to this brief.

STATEMENT OF THE CASE

Petitioners' description of the nature of the case and course of proceedings is accurate except that petitioners omit to mention that the District Court on April 26, 1984, granted respondents leave to file a supplemental complaint alleging violation of the right to lawful government action conferred upon the taxpayers of the City of Cleveland by its charter. The Court of Appeals did not pass on the standing issue presented by this complaint. P. App. A26.

Respondents believe that additional facts are material to the questions presented, as follows:

1. Ordinance and Lease

On June 20, 1983, the Cleveland City Council passed Ordinance No. 1607-83 authorizing the Director of Port Control to enter into a lease with Anthony M. Pilla, Bishop of Cleveland, on behalf of the

Catholic Diocese. The lease provides the Diocese with 2,733 square feet of space at Cleveland Hopkins Airport for use as a Catholic chapel for a period of twenty years at a rental of $1,200 per year (the equivalent of 44 cents per square foot per year). Previously, the city had offered the diocese a 20 year lease for 1,913 square feet at a total rental of $1.00 per year. The city had also rejected a diocese offer to rent 1,650 square feet for ten years at a rate of $3.00 per square foot per year.

The ordinance provides that the city can terminate the lease on six months' notice if the chapel space is needed for airport development, but in that event the city will be required to make "suitable comparable space" available to the diocese.

The ordinance requires city approval for all construction.

The Director of Port Control and the Bishop executed a lease agreement pursuant to the ordinance. The lease incorporates the terms specified in the ordinance. The lease also provides that "subject to previously scheduled worship services and organized events, the Bishop, upon terms and conditions satisfactory to him, shall make the premises available to other religious groups and individuals for uses consistent with the provision of chapel facilities for the air traveling public and for airport patrons, tenants and their employees."

The Director of Port Control stated that the city would monitor compliance with this provision, including determining whether any groups denied access were religious.

2. The Chapel Facility

The planned chapel will be large enough to seat 200 people. It will contain pews, an altar, a tabernacle, a pulpit, a credence table, a holy water font, and a confessional. A full-time Catholic chaplain will celebrate Mass on a regular basis. The chapel will have some stained glass windows perhaps in or around the two exterior doors to the chapel. A sign will indicate the presence of the chapel, and signs elsewhere in the airport will direct the public to the chapel.

3. The Chapel Location

The space leased for the chapel is "L" shaped. It is adjacent to a bank at the corner of the terminal mall area and Concourse B on the main level of the terminal. The chapel will have entrances at both ends of the bank, opening onto the mall and Concourse B.

The mall is located at the junction of the three airport concourses. It is the major concession area at the airport.

The mall area, in addition to the bank, includes a newsstand adjacent to the mall entrance of the chapel. Restaurants are located directly across from both the mall and Concourse B entrances to the chapel. The mall also contains a flower shop, a tobacco and gourmet shop, a bookstore, a country store, a gift shop, a candy store, a cookie shop, and a bar. Two shop areas are vacant.

Concourse B is one of three terminal concourses. It serves Eastern, Delta, Wright, Republic, and Conair Airlines. All passengers leaving or arriving by these airlines, a total of one to two million passengers annually, must pass by the chapel on Concourse B.

4. Other Rentals and Demand for Concession Space.

In 1983, the rental of the bank adjacent to the chapel, which is 1,100 square feet, generated $29,420 in income at a rate of $26.75 per square foot. The average market rental for all concessions is $20.00 per square foot. Airlines lease space in the terminal building for all purposes at rates ranging from $4.00 to $68.00 per square foot annually.

The city used the chapel space for storage and overflow office purposes. The city has never made any effort to lease the space to a commercial tenant. No applicant for commerical space has requested this specific space. The Director of Port Control and its Comptroller testified that the space is suitable for commerical use.

For the last five years, there has been a steady stream of inquiries regarding the leasing of concession space. In December, 1980, The Director of Port Control stated in a letter that there were only 4,210 square feet of concession space available. In March of 1980, he rejected an offer by a retailer to lease 500-1,000 square feet of concession space, because all space on the upper level of the mall area was committed to other concessions.

5. Relationship of Airport and City

Cleveland Hopkins International Airport is operated by the Department of Port Control, which is a department of the City of Cleveland. All funds of the Department of Port Control are public moneys of the City of Cleveland. The revenues of the Department of Port Control are deposited in the city treasury, and the department may make

no expenditure, for whatever purpose, without an appropriation by the Council of the City of Cleveland. The city secures general obligation bonds for capital improvements at the airport. As of December 31, 1982, over $10,000,000 of these general obligation bonds of the City of Cleveland were outstanding.

6. Relationship Between City and Airlines

In 1976, the city entered into an agreement and lease with the major airlines ("Master Lease Agreement") and issued revenue bonds secured by the Master Lease Agreement for additional capital improvements at the airport. The Master Lease Agreement provides generally that the landing fees paid by the airlines will be adjusted so that airport revenues will equal airport expenses.

Section 8.06 of Article VIII of the Master Lease Agreement provides for incen-

tive compensation in the form of payments by the airlines into the general fund of the city as a reward for efficient operation of the airport. Subsection (B) provides for payment into the general fund in each year that non-airline revenue per passenger (adjusted for inflation) is greater than it was the previous year.

An incentive payment, including payment pursuant to subsection (B), has been made to the general fund annually since at least 1979. In 1982, the incentive payment to the general fund was $409,630 and in 1981 it was $2,272,293. The city, by failing to obtain an average market rate rental for the chapel space and instead leasing the space to the diocese at a rate of $53,460 per year below market, stood to lose up to $59,459 in incentive compensation to its general fund in 1984.

7. Impairment of Use and Enjoyment of Airport.

Respondents in this action include taxpayers who are also users of the airport. Eileen Roberts submitted an affidavit which is representative of these claims. She states that for both professional and personal reasons she has frequent occasion to use Cleveland Hopkins International Airport, and specifically Concourse B, at the base of which the chapel will be located. Roberts asserts that the presence of a Catholic chapel, "clearly decorated as such, and having the general appearance and function of a church," will interfere with her use and enjoyment of Concourse B as a public facility.

Roberts states that as a practical matter she is compelled to use the airport and Concourse B in her travel to and from

Cleveland and that she has frequent occasion to meet visitors from other places, including foreign countries, at the airport. Roberts further states that the presence of a sectarian chapel on city property at the airport will create an impression that the city sponsors one religious sect. This impression will both affront and embarrass her.

SUMMARY OF ARGUMENT

The Sixth Circuit found that respondents who regularly use the city airport have standing to challenge the city's allocation of a portion of this public facility for sectarian purposes. On the facts presented here, this holding is consistent with the decisions of this court and with American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, 698 F.2d 1098 (11th Cir. 1983).

The Sixth Circuit also entered an interlocutory ruling that respondents' taxpayer claims present questions of fact which should be resolved by the District Court. The Court of Appeals found evidence in the summary judgment record that the airport chapel lease was a subsidy by the city to the diocese and would result in a loss of municipal revenues. The remand to the District Court for consideration of these facts is consistent with the decisions of this Court and with Brashich v. Port Authority of New York, 628 F.2d 1344 (2d Cir. 1980).

The Sixth Circuit did not reach the issue of respondents' taxpayer standing based upon their interest conferred by the Cleveland City Charter in the city's lawful exercise of its corporate powers. The threatened injuries to this interest also afford respondents standing consistent with the decisions of this Court.

REASONS FOR DENYING THE WRIT.

1. The Sixth Circuit Holding That Respondents Have Standing Based On Interference With Their Beneficial Use of the Airport Is Consistent with the Decisions of this Court.

In finding that respondents have standing based on interference with their beneficial use of the airport, the Sixth Circuit applied the established standard that they must have a sufficient personal stake in the outcome of the controversy to warrant their invocation of the remedial powers of the federal courts. P. App. A10-11. The Court of Appeals reviewed Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464 (1982), noting that the plaintiffs in that case lacked standing on the basis of non-economic injury because they:

> fail[ed] to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III....

Id. at 485.

The Court of Appeals recognized that this Court did not retreat from its earlier holding that standing could be based on non-economic injury, United States v. SCRAP, 412 U.S. 669, 686-688 (1973). The Valley Forge plaintiffs did not allege any injury of any kind. They did not reside in the state where the property was located, all of them learned of the challenged property transfer through news releases, and none of the plaintiffs expressed any interest in using the property and thus could not claim that their beneficial use of the property was impaired. P. App. A12-14.

Applying the principles discussed in Valley Forge, a unanimous panel of the Sixth Circuit found that the respondents here have standing to challenge the establishment of the airport chapel based upon their claim that it will impair their beneficial use of the airport. The court's conclusion that regular users of a government public facility have standing to challenge the allocation of such property for sectarian purposes is hardly an extravagant proposition. Cleveland's lease of a portion of its airport for a chapel effects a pro tanto reduction of the beneficial use of the airport as a public facility by those airport patrons who, because they are affronted or for some other reason, will not utilize the chapel.

The injury to these persons, diminution in the use and enjoyment of a public facility, is every bit as real as the loss suf-

fered by a student when his camping, hiking, fishing, or sightseeing is disturbed by the adverse environmental impact caused by the non use of recyclable goods. United States v. SCRAP, supra, 412 U.S. 669.

In addition, users of the airport will confront a chapel established with the apparent sponsorship of the city. The lease ordinance conferring a below market subsidy rental on the diocese is a matter of public knowledge and places the official support of the city behind the chapel.

The city has located the chapel a few feet from the center of the major concession area which is located at the junction of the airport's three concourses. All passengers departing or arriving on Eastern, Delta, Republic, Wright and Conair Airlines, a total of one to two million passengers annually, must pass by the chapel to use

Concourse B. The chapel will be identified by a sign. The chapel will have some stained glass windows perhaps in or around two exterior doors opening onto the mall and concourse B. The chapel will be staffed by a priest who will conduct regularly scheduled services. Other signs throughout the city airport will direct the public to the chapel. On these facts, the Court of Appeals found that the city will place "unwelcome religious exercises" in the path of respondents. P. App. A18-19.

In a case dealing with the leasing of advertising space for political ads on a public rapid transit system, this Court has remarked upon the interest of a transit system in protecting the general public convenience, comfort, and safety. Lehman v. City of Shaker Heights, 418 U.S. 298, 303 (1974). In upholding an across the board

ban on political advertising, the Court cited concerns with imposition on a captive audience and lurking doubts about favoritism.

These concerns parallel the injury in fact which respondents will suffer here. They will confront unwanted religious exercises in a public facility, and it will appear to them that the city sponsors a Catholic chapel.

Moreover, even if respondents were to utilize other concourses, which would require booking other airlines, and avoid the mall area, the Sixth Circuit properly concluded that this impingement on their right to use the airport is sufficient to confer standing, since it would force them to assume special burdens to avoid the religious exercises. P. App. A18-19. See also Allen v. Hickel, 424 F.2d 944 (D.C.

Cir. (1970). (Plaintiffs were entitled, as members of the public, to enjoy the park land and its devotion to permissible public use; a government action cannot infringe that right or require them to give it up without access to the court to complain that action is unconstitutional). On these facts, the Sixth Circuit holding that respondents have standing based on interference with their beneficial use of the airport is consistent with the decisions of this Court.

2. The Sixth Circuit Holding that Respondents Have Standing Based on Interference with Their Beneficial Use of the Airport Does Not Conflict with the Decision of the Eleventh Circuit.

Petitioners attempt to claim that the decision below conflicts with that of the Eleventh Circuit in American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 698 F.2d 1098 (1983).

Rabun County held that two plaintiffs who camped regularly, though not in the park where a cross was located, had shown a particularized and personalized non-economic injury to distinguish them from the general citizenry. These plaintiffs testified that they would not use the state park as long as the cross remained because of both its physical and metaphysical impact. The Sixth Circuit cited Rabun County as persuasive authority for the proposition that a plaintiff challenging sectarian use of public property for impairing his actual use and enjoyment of that property has standing to challenge the impermissible activity. P. App. A18-19.

Petitioners attempt to distinguish Rabun County. They claim that the lighted cross in Rabun County was large and visible, whereas respondents here will encounter only

a sign. Petitioners conveniently overlook that the chapel to which the sign is attached will hold two hundred people and is itself a very large structure, that it is located at the center of the airport in the major concession area, that it will be staffed full-time by a priest who will conduct regularly scheduled religious services, that it will contain stained glass windows and other permanent religious furnishings, that the one to two million passengers using Concourse B each year must pass by the chapel to get to and from their planes, and that signs at other locations in the airport will indicate the presence of the chapel. While cases will seldom present exactly the same facts, it is clear that there is no conflict between the holding here and that of the Eleventh Circuit in Rabun County.

3. The Sixth Circuit's Interlocutory Ruling on Respondents' Taxpayer Standing Claim Is Consistent with this Court's Decisions.

The Sixth Circuit's interlocutory ruling that respondents' taxpayer standing claims present questions of fact which should be resolved by the District Court is fully consistent with this Court's decisions. The Court of Appeals recognized that federal taxpayers normally lack standing to sue to enjoin federal expenditures which they regard as unconstitutional. Frothingham v. Mellon, 262 U.S. 447 (1923). An exception tion to this rule permits federal taxpayers to sue to enjoin appropriations made by Congress pursuant to the Taxing and Spending Clause of the Constitution where the appropriations violate a specific constitutional provision, such as the Establishment Clause. Flast v. Cohen, 392 U.S. 83 (1968). This

exception is a narrow one and does not apply in the case of a property transfer by the Executive branch. Valley Forge Christian College v. Americans United for Separation of Church and State, supra, 454 U.S. 464.

On the other hand, the Frothingham v. Mellon decision recognized a distinction between suits by federal taxpayers and suits by municipal taxpayers. The latter are permitted to sue to enjoin the misuse of the moneys of a municipal corporation. The interest of a taxpayer in the application of a municipality's moneys is direct and immediate. It is not unlike that of a stockholder in the finances of a private corporation. Frothingham v. Mellon, supra, 262 U.S. at 486-487. This rule is well established. There must be a good faith pocketbook action to contest a direct dollars and cents injury to the municipal

fisc. Doremus v. Board of Education, 342 U.S. 429, 434-435 (1952). [1], [2]

1/ The decision of this Court just two terms ago in Lynch v. Donnelly, ___ U.S. ___, 104 S.Ct. 1355 (1984), confirms the vitality of this doctrine. In Lynch the Court decided the merits of a suit by municipal taxpayers to enjoin city expenditures for a nativity scene. The First Circuit decision under review expressly found that plaintiffs had standing as municipal taxpayers, concluding that Valley Forge did not alter the standing of such taxpayers to challenge an allegedly unconstitutional use of their tax dollars. Donnelly v. Lynch, 691 F.2d 1029, 1031-1032 (1982). The Court will take notice on its own motion where jurisdiction does not exist. Butler v. Dexter, 425 U.S. 262, 263 n. 2 (1976). As the issue was raised and passed upon below, this Court necessarily found that the municipal taxpayers had standing when it decided Lynch.

2/ In dismissing respondents' suit, the District Court held that injuries which they sustained in common with other taxpayers were insufficient to confer standing.

> The plaintiffs' contention, that their status as municipal taxpayers and their allegation that the municipality will suffer financially if the lease is executed will confer such a personal

(Footnote continued next page)

The Sixth Circuit properly applied this principle. After a careful review of the facts presented by both sides, the Court concluded that there were questions of material fact as to whether the rental of the

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(Footnote 2 continued) stake in this controversy as to confer them standing, is without merit. The plaintiffs have failed to show how they - as opposed to any other Cleveland taxpayer - will suffer any recognized personal injury.

P. App. A35.

In Grand Rapids School District v. Ball, U.S. ___, 105 S.Ct. 3216, 3221 at n. 5 (1985), this Court made it clear that taxpayer status could continue to confer standing after the decision in Valley Forge:

> Petitioners alleged that respondents lacked taxpayer standing under Flast v. Cohen, and Valley Forge Christian College v. Americans United for Separation of Church and State. The District Court and the Court of Appeals rejected the standing challenge. We affirm this finding, relying on the numerous cases in which we have adjudicated Establishment Clause challenges by state taxpayers to programs for aiding non-public schools.

(citations omitted).

space for the chapel to the diocese was a subsidy and would harm the city's fisc. P. App. A6-8, 20-21, 26. Petitioners' one-sided presentation of the facts on this issue does not detract in any way from the analysis of the court, nor does it take into account the evidence that as early as 1980, the city was beginning to run out of concession spaces for commercial use.

In addition, the Court of Appeals did not pass on three aspects of economic harm to the city as a result of the chapel lease. Respondents will advance these additional grounds in support of standing in the District Court. [3]

3/ First, the diocese originally offered three dollars per square foot for 1,650 square feet of space for a period of ten years, and the city rejected the offer. The rejection (Footnote continued next page)

The potential loss of incentive payments cited by the Sixth Circuit and each of these

(Footnote 3 continued) of the offer of three dollars per square foot has resulted in a non-speculative loss to the city of $25,500. (1,650 x $3.00 x 10) minus ($1,200 x 20 under the current lease) equals $25,500.

Second, aside from the loss of the incentive payment, the city's rental of the chapel space to the diocese at a small fraction of the market rate gives respondents standing even if the airlines reimburse these lost rental payments. All airport revenues are deposited in the city treasury. The fact that the airlines may reimburse the city for the revenues it might otherwise obtain from the diocese does not alter the fact that there is a loss to the city treasury in the first instance. This Court has never indicated that reimbursement by a third party would defeat standing that was otherwise present. See Stone v. Graham, 449 U.S. 39 (1980) (per curiam) (It was not a defense that copies of the Ten Commandments posted in public classrooms were financed by voluntary private contributions, for the mere posting of the copies under the auspices of the Legislature provides the official support of the state); Aguilar v. Felton, __ U.S. ___, 105 S.Ct. 3232 (1985). (Taxpayers bring successful challenge to New York City administration of Title I educational funds provided by the federal government). (Footnote 3 continued next page)

additional claims which the court did not reach upon concern a pocketbook injury to the municipal fisc. The right of respondents as municipal taxpayers to sue to prevent these harms is well established. The Sixth Circuit's reversal of the summary judgment and remand of this case to the District Court so that it can determine the taxpayer standing issue is consistent with the decisions of this Court.

(Footnote 3 continued)

Finally, the city will expend funds administering the lease. The chapel lease has already cost the city a calculable amount of time spent in negotiating the lease during a period of over three years, in drafting the lease ordinance, and in city council discussion of the matter. The city will spend money reviewing the architectural plans for the chapel, erecting signs directing people to the chapel, monitoring the diocese's compliance with the lease provision that the chapel space be made available to other groups, and providing police and other services. These costs are not speculative, and undoubtedly will far exceed the $1,365 acquisition cost and $20 per year expenditure for erecting and dismantling the nativity scene that this Court cited in its recent decision in Lynch v. Donnelly, ___ U.S. ___, 104 S.Ct. 1355, 1358 (1984), which, as noted above, was a taxpayer action.

4. The Sixth Circuit's Interlocutory Ruling on Respondents' Taxpayer Standing Claim Does Not Conflict With the Decision of the Second Circuit.

Petitioners assert that the decision below conflicts with Brashich v. Port Authority of New York, 628 F.2d 1344 (2d Cir. 1980), which summarily affirms the District Court decision reported at 484 F. Supp. 697 (S.D.N.Y. 1979), on the issue of taxpayer standing. Brashich has no application here, and the Sixth Circuit did not find petitioners' argument worthy of discussion.

In Brashich, the court held that the plaintiff lacked standing as a taxpayer to challenge the existence of three chapels located on property at Kennedy Airport at some distance removed from the terminal buildings. The plaintiff, however, had never asserted such standing or alleged injury as a

taxpayer. This is hardly surprising as the Brashich plaintiff sued only the Port Authority of New York and New Jersey, an independent entity which lacks the power to levy taxes. Simply put, there was no basis for taxpayer standing in that case, and there can be no conflict with the decision below. Respondents here bring a taxpayer action. They have sued the City of Cleveland, which levies taxes upon them and also operates the airport.

5. The Sixth Circuit Decision is Supported by an Additional Ground Which the Court Did Not Reach.

Respondents' supplemental complaint filed April 26, 1984, presents a further ground for standing which is consistent with the decisions of this Court. The City of Cleveland by §§87 and 90 of its city charter has conferred upon its taxpayers the right to seek

relief from "the misapplication of funds of the city, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the city in contravention of law...." App. A4-5.

The Sixth Circuit, having determined that respondents have standing, found it unnecessary to pass on this claim. The court commented that the argument added little to the claim of standing on the basis of harm to public finances, since if the contract is illegal, it is because it in some way represents a subsidy by the city to the diocese. P. App. A20 n.4.

While the court's comment was correct, the claim presents an additional instance of non-economic harm. The relevant charter provisions confer rights only upon taxpayers, but they afford protection against any abuse of corporate powers or illegal contract,

irrespective of harm to the municipal fisc. The charter thus confers upon respondent taxpayers a legally protected interest in the city's lawful exercise of its corporate powers, including the power to contract. It is well settled that interests created by legislative action can afford a basis for standing. Warth v. Seldin, 422 U.S. 490, 500 (1975). For standing to exist, there must be a claim of injury in fact to the interest, and it must arguably be within the zone of interests protected by the statute or constitutional provision at issue. Association of Data Processing Service Org., Inc. v. Camp, 397 U.S. 150, 153-154 (1970).

Respondents assert substantial claims that their interest in lawful action by the city is injured by city violations of the Establishment Clause absent harm to the municipal fisc. The ordinance, the terms of the

chapel lease, and the totality of the circumstances at the airport create the appearance that the city is sponsoring the chapel. Such sponsorship is illegal under the First Amendment even if the airlines reimburse all the city's financial losses. In addition, the lease provision requiring the Bishop to make the airport chapel available to other religious groups and the city's stated intent to enforce this provision create a serious entanglement of church and state which is unlawful absent any harm to the municipal fisc. See Larkin v. Grendel's Den, 459 U.S. 116 (1982) (Delegation to churches and schools of power to veto liquor licenses within a 500 foot radius enmeshes churches in the process of government and creates the danger of political fragmentation along religious lines).

Moreover, respondents' interest in the city's lawful exercise of its corporate powers is within the zone of interests protected by the Establishment Clause, which seeks to protect religious institutions from government interference and government from sectarian influences. As respondents claim injury in fact to their interest in the city's lawful exercise of its corporate powers, and this interest is within the zone of interests protected by the Establishment Clause, respondents have standing on this additional ground, which is consistent with the decisions of this Court.

CONCLUSION

For these reasons, this Court should deny the writ.

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APPENDIX

Ordinance No. 1607-83.

By Councilmen Ciolek, Johnson, Woods and Forbes (by departmental request).

An emergency ordinance to amend Section 1 of Ordinance No. 843-82, passed May 24, 1982, as amended by Ordinance No. 2124-82, passed December 6, 1982, authorizing the Director of Port Control to enter into an agreement with Anthony M. Pilla, Bishop of Cleveland, for use of certain space at Cleveland Hopkins International Airport.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That Section 1 of Ordinance No. 843-82, passed May 24, 1982, as amended by Ordinance No. 2124-82, passed December 6, 1982, be and the same is hereby amended to read as follows:

"Section 1. That any provision of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary notwithstanding, the Director of Port Control be and said Director hereby is authorized to enter into an Agreement on behalf of the City of Cleveland granting Anthony M. Pilla, Bishop of Cleveland, on behalf of The Catholic Diocese of Cleveland, the permission, privilege and license to use approximately 2733 square feet of space in the Passenger Terminal Building at Cleveland Hopkins International Airport for the operation of a chapel at a fee of twelve hundred dollars ($1,200.00) per year. Said Agreement shall

have a term of twenty (20) years commencing upon execution, subject to termination at any time upon six (6) months' notice if all or part of such space is needed by the City for airport development. The Bishop of Cleveland shall pay all charges for installation and usage of utilities taken at the premises, and shall obtain the approval of the Director of Port Control prior to constructing or installing any improvements on the premises. In the event it becomes necessary to terminate this Agreement prior to the stated termination date, suitable comparable space will be made available to the Bishop of Cleveland."

Section 2. That existing Section 1 of Ordinance No. 843-82, passed May 24, 1982, as amended by Ordinance No. 2124-82, passed December 6, 1982, be and the same is hereby repealed.

Section 3. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed June 20, 1983

Effective June 23, 1983

City of Cleveland Charter

§8/ Application for Injunction

The Director of Law shall apply, in the name of the City, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the City, or the abuse of its corporate powers, or the execu-

tion or performance of any contract made in behalf of the City in contravention of law, or which was procured by fraud or corruption.

§90 Taxpayer's Suit

In case the Director of Law, upon written request of any taxpayer of the City fails to make any application provided for in the preceding three sections such taxpayer may institute suit or proceedings for such purpose in his own name on behalf of the City. No such suit or proceeding shall be entertained by any court until such request to the Director of Law shall first have been made, nor until the taxpayer shall have given security for the costs of the proceeding.